

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

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BERKSHIRE BANK,

Plaintiff,

- against -

ST. PAUL MERCURY INSURANCE COMPANY,

Defendant.
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Case 1:09-cv-00578-TJM-RFT

Civil Action

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APPEARANCES:

FOR THE PLAINTIFF:

McNAMEE LOCHNER TITUS
& WILLIAMS, P.C.
677 Broadway
Albany, New York 12207

OF COUNSEL:

Michael J. Hall, Esq.
Peter A. Pastore, Esq.

FOR THE DEFENDANT:

FRENKEL LAMBERT WEISS WEISMAN
& GORDON LLP
One Whitehall Street, 20th Floor
New York, New York 10004

Arthur N. Lambert, Esq.
Daniel W. White, Esq.
Dennis O'Neil Cowling, Esq.

ORDER

In this action, Plaintiff, Berkshire Bank ("Berkshire"), sought to recover \$4,850,000 from Defendant, St. Paul Mercury Insurance Company ("St. Paul"), based on a Financial Institution Bond issued by St. Paul. Following discovery, St. Paul moved for summary judgment dismissing Berkshire's Complaint by notice of motion dated October 15, 2010, with additional papers in support of the motion (ECF Nos. 17-20). Berkshire submitted its papers in opposition to the motion on November 9, 2010 (ECF No. 24). St. Paul submitted its reply papers on December 2, 2010 (ECF No. 27). On December 9, 2010, St. Paul submitted a letter application requesting correction and substitution of an

exhibit to its summary judgment motion (ECF No. 29), which the Court granted on December 10, 2010 by Text Order on the Docket without ECF number. Oral argument on the motion was held before this Court on December 13, 2010.

After careful review and due deliberation of the record before this Court, the applicable law, the arguments of counsel, and, as set forth in the transcript following oral argument, it is hereby

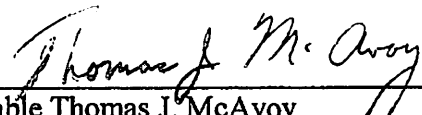
ORDERED that, pursuant to Rule 56 of the Federal Rules of Civil Procedure and Local Rule 7.1 of the United States District Court for the Northern District of New York, Defendant St. Paul's motion for summary judgment is granted and the Complaint of Plaintiff Berkshire is dismissed with prejudice; and it is further

ORDERED that, the Clerk of the Court enter final judgment in this action dismissing Berkshire's Complaint with prejudice; and it is further

ORDERED that, the Clerk of the Court is to provide a copy of that final judgment to the attorneys for the parties herein .

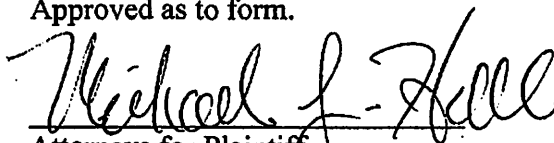
IT IS SO ORDERED.

Dated: December 28, 2010



Honorable Thomas J. McAvoy
Senior United States District Judge

Approved as to form.



Attorneys for Plaintiff